

Patricia P. Hollenbeck (SBN 121765)
Rebecca G. Church (SBN 259652)
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744-2200
Facsimile: (619) 744-2201
E-mail: phollenbeck@duanemorris.com
rchurch@duanemorris.com

David E. Jones (*admitted pro hac vice*)
LOGAN & LOWRY, LLP
102 East Third Street
P.O. Box 452469
Grove, Oklahoma 74345
Telephone: (918) 786-7511
Facsimile: (918) 786-5687
E-mail: djones@loganlowry.com

Attorneys for JOHN ELMBURG, ROBERT
ELMBURG, ERIC ELMBURG, ROCKY
FLICK, CRESTWOOD HOLDINGS, INC. and
BERGAN, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MONTGOMERY,
Plaintiff,

v.

WAL-MART STORES, INC.;
KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive,

Defendants.

Case No.: 12CV3057 L (WVG)

PROOF OF SERVICE

Ctrm: 3B
Judge: Hon. Janis L. Sammartino

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 750 B Street, Suite 2900, San Diego, CA 92101. On March 6, 2013, I served the within documents:

► **DEFENDANT BERGAN LLC'S NOTICE OF MOTION AND MOTION TO DISMISS FOR LACK OF STANDING (12(B)(1)), FAILURE TO STATE A CLAIM (12(B)(6)) AND MOTION TO STRIKE (12(F))**

► **DEFENDANT BERGAN LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FOR LACK OF STANDING (12(B)(1)), FAILURE TO STATE A CLAIM (12(B)(6)), AND MOTION TO STRIKE (12(F))**

► **DECLARATION OF ERIC ELMBURG, MANAGER OF BERGAN, LLC IN SUPPORT MOTION TO DISMISS FOR LACK OF STANDING (12(B)(1)) AND FAILURE TO STATE A CLAIM (12(B)(6))**

☐ **BY U.S. MAIL** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

David E. Jones
LOGAN & LOWRY, LLP
 102 East Third Street
 P.O. Box 452469
 Grove, Oklahoma 74345

☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING** by causing such document(s) listed above to be served through this Court's electronic transmission facilities via the Notice of Electronic Filing (NEF) and hyperlink, to the parties and/or counsel who are determined this date to be registered CM/ECF Users set forth in the service list obtained from this Court on the Electronic Mail Notice List.

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Diane M. Breneman**
 db@litigationkc.com,suzen@litigationkc.com,sd@litigationkc.com,amy@litigationkc.com
- **Stacey L. Dungan**
 sd@litigationkc.com
- **Patricia Pichon Hollenbeck**
 phollenbeck@duanemorris.com,cdarmijo@duanemorris.com

- 1 • **Paul B La Scala**
2 plascala@shb.com
- 3 • **Kenneth B. McClain**
4 kbm@hfmlegal.com
- 5 • **Frank James Polek**
6 frank@poleklaw.com
- 7 • **Pavan Rosati**
8 prosati@gnhllp.com, nsands@gnhllp.com, cwalker@gnhllp.com
- 9 • **David L. Shain**
10 dshain@fcoplaw.com, tmeehan@fcoplaw.com

11 ☒ I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct.

13 Executed on March 6, 2013, at San Diego, California.

14 
15 _____
16 Carlos D. Armijo
17
18
19
20
21
22
23
24
25
26
27
28